

# Legislator University

Not Federalism: The Relationship  
Between State and Local Governments





# Relationship between the State and Local Governments

Three concepts define the relationship between the state and local governments:

- Home rule
- Power and responsibility of the Legislature
- Constitutional limitations on local governments

# ***What is “home rule?”***



- Under the Florida Constitution, “home rule” is the authority for local self-government in local affairs.
- It is local government authority over fiscal, legal, and regulatory issues at the local level *subject to law*.
- Sources of law:
  - Florida Constitution
  - Florida Statutes
  - Special acts compiled in the Laws of Florida



# Home Rule

- Provides local governments with sufficient flexibility to respond to local issues and concerns
- Enables local governments to adopt and implement local policy without the need for constant action by the Legislature
- Allows the Legislature to concentrate on complex issues of statewide policy and those local issues requiring its direct action



# Evolution of Home Rule

- Florida Constitutions before 1934: Legislature had exclusive power over counties and municipalities
- Between 1934 and 1966: Four different amendments were adopted that provided authority for certain local charter governments
  - 1956: Amendment was adopted that authorized the present Miami-Dade County Charter
- 1968: Present constitutional provisions regarding home rule were adopted
  - Express authority for county and municipal home rule
  - All subject to legislative authority



# Home Rule Authority

- Florida Constitution provides three types of local general authority:
  - Charter Counties
  - Non-charter Counties
  - Municipalities (cities, towns, villages, etc.)
- Constitutional authority is implemented in the Florida Statutes:
  - County powers – Chapter 125, F.S.
  - Municipal powers – Chapter 166, F.S.



# Counties

- Charter counties:
  - Florida Constitution provides broad powers and authority for charter counties – they have “all powers of local self-government not inconsistent with general law, or with special law approved by vote of the electors” [Art. VIII, s. 1(g)]
  - The charter is the “Constitution for the County”
  - The Legislature must authorize county voters to adopt a charter for county government [Art. VIII, s. 1(c), Fla. Const.; s. 125.60, F.S.], and the charter may only be adopted, amended, or repealed by county voters
- Non-charter counties:
  - Have such powers and authority as provided by the Legislature – the “power of self-government as is provided by general or special law” [Art. VIII, s. 1(f), Fla. Const.]
- County powers are granted in chapter 125, F.S., and apply uniformly to charter and non-charter counties



# Differences between Charter and Non-charter Counties

- Constitutional authority
  - Charter counties have "all powers not inconsistent with general law" or special law approved by their voters
  - Non-charter counties have only those powers granted by general or special law
- Relation to local municipalities
  - For charter counties, the county charter may provide that county ordinances prevail if there is a conflict with municipal ordinances
  - For non-charter counties, a county ordinance that conflicts with a municipal ordinance is not effective within that municipality to the extent of the conflict



# Municipalities

- The Florida Constitution provides a different scope of powers and authority for municipalities, subject to limitations provided in law
  - Municipalities have governmental, corporate, and proprietary powers needed to conduct municipal government, perform municipal functions, and render municipal services
  - Municipalities may exercise any power for municipal purposes except as otherwise provided by law
- A “municipal purpose” is any activity or power that may be exercised by the state or its political subdivision

***Are there  
restrictions  
on the  
exercise of  
home rule  
powers by  
local  
governmen  
ts?***



Home rule powers of local governments are limited by:

- The Florida Constitution
- General laws creating or restricting home rule powers
- Certain special laws (local laws) that may restrict home rule powers
- General laws preempting to the state the authority to legislate or regulate in certain policy areas



# Constitutional Restrictions on Counties and Municipalities

- ***Charter counties:*** County charters and charter amendments cannot conflict with general law and, after 2018, county charters may no longer revise or abolish specific elected county offices
- ***Non-charter counties:*** Have only those powers the Legislature provides in general or special law
- ***Municipalities:*** Have broad powers to adopt ordinances, subject to state law, with the exception of certain prohibited policy areas:
  - Annexation of land or merger with other existing government(s)
  - Exercising power outside of the municipal jurisdiction
  - Any subject expressly prohibited by the Constitution
  - Any subject preempted to state or county government by general law
  - Any subject preempted to the county in the county charter

***What  
authority  
does the  
Legislature  
have with  
regard to  
home rule?***



The Legislature has exclusive power to:

- Create, modify, or abolish counties or municipalities
- Control tax policy and implementation
- Adopt laws creating or limiting powers of local governments, including limited areas or communities (local bills)



# State Preemption

Preemption of a subject matter by the Legislature may be express or implied:

- *Express preemption* is when the Legislature passes a law clearly stating its intent to preempt the subject matter to the state
- *Implied preemption*:
  - No statement of intent
  - The legislative scheme of regulation is so pervasive in the area that local legislation would present the danger of conflict with the law
  - Found in judicial rulings



# Where to Go for Help

## **State Affairs Committee**

Ralph Massullo, MD, *Chair*

Heather Williamson, *Staff Director*

(850) 717-4890

## **Local Administration & Veterans Affairs Subcommittee**

Eric Miller, *Policy Chief*

(850) 717-4890